

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ACCEPTED/FILED

MAR 20 2017

Federal Communications Commission
Office of the Secretary

In the Matter of M3 USA Corporation's
Petition for Expedited Declaratory Ruling

Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991

CG Docket No. ~~02-278~~

05-338

PETITION FOR EXPEDITED DECLARATORY RULING

M3 USA Corporation
Craig Overpeck, Chief Technology Officer
501 Office Center Drive Suite 410
Fort Washington, PA 19034
(202) 293-2288

Paul Werner
SHEPPARD MULLIN RICHTER & HAMPTON LLP
2099 Pennsylvania Ave NW, Suite 100
Washington, D.C. 20006
(202) 747-1931
pwerner@sheppardmullin.com

Counsel to M3 USA Corporation

March 20, 2017

EXECUTIVE SUMMARY

M3 USA Corporation (“M3”) conducts qualitative and quantitative market research through blinded surveys in the healthcare sector. To invite participation in its surveys, M3 uses facsimile communications – which even today remain a vital way to engage healthcare professionals. M3’s survey invitations are purely informational. Blinded surveys effectively prevent marketing to survey participants. M3’s survey invitations are protected speech, advance the practice of medicine and patient care, and are not regulated under the Telephone Consumer Protection Act (“TCPA”) or the Commission’s regulations implementing that statute.

Yet, like so many legitimate businesses, M3’s survey invitations have become the target of abusive TCPA litigation threatening ruinous statutory damages. Professional TCPA plaintiffs and their counsel are increasingly seeking to impose TCPA liability on informational survey communications by exploiting the Commission’s “pretext” exception improperly in an attempt to convert these communications into TCPA “advertisements.” The result is confusion in the courts, a cloud of uncertainty and intolerable risk for legitimate survey businesses, and the chilling of important and beneficial communications.

M3 therefore requests an expedited declaratory ruling from the Commission to confirm that research survey invitations are not TCPA “advertisements.” Action from the Commission is necessary to dispel confusion over the proper application of the “pretext” exception to informational survey faxes like those used by M3, provide needed clarity and certainty to market research survey companies, and close a regulatory loophole being exploited improperly to target informational communications for massive TCPA liability. Accordingly, the Commission should declare:

1. There is no presumption under the TCPA that faxes sent by for-profit businesses are pretexts for advertisements;

2. Informational faxes are not pretexts for advertisements under the TCPA unless the transmission promotes specific, commercially-available property, goods or services *to the recipient of the fax*;
3. Market research surveys do not constitute property, goods or services vis-à-vis the persons taking the surveys under the TCPA; and
4. Invitations to participate in market research surveys are not advertisements under the TCPA unless commercially-available property, goods or services are promoted in the fax itself or during the survey itself.

These rulings are supported by existing Commission precedent and the text, structure, purpose, and history of the TCPA, and promote sound public policy.

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	i
I. INTRODUCTION.....	2
A. BACKGROUND.....	2
1. M3 Conducts Blinded Market Research Surveys.....	2
2. Pending TCPA Litigation Against M3.....	4
B. THE DEFINITION OF AN “ADVERTISEMENT” AND SUBSEQUENT RULINGS BY THE COMMISSION.....	7
1. The Commission’s Guidance On “Advertisements.”	7
2. The Commission’s Guidance On Surveys.....	8
II. ARGUMENT.....	10
A. THE COMMISSION HAS THE POWER TO ISSUE A DECLARATORY RULING CLARIFYING THE CIRCUMSTANCES IN WHICH A SURVEY FAX CONSTITUTES PRETEXT FOR AN ADVERTISEMENT UNDER THE TCPA.....	10
B. COMMISSION ACTION IS NECESSARY TO DISPEL CONFUSION IN THE COURTS REGARDING THE DEFINITION OF “ADVERTISEMENT” AND THE EFFECT OF THE COMMISSION’S “PRETEXT” FINDINGS.....	10
C. UNCERTAINTY OVER WHAT CONSTITUTES AN “ADVERTISEMENT” SUBJECT TO REGULATION UNDER THE TCPA HAS CHILLED LEGITIMATE SURVEY COMMUNICATIONS AND FUELED ABUSIVE CLASS LITIGATION AND SETTLEMENTS.....	14
D. M3’S MARKET RESEARCH SURVEY INVITATIONS ARE NOT ADVERTISEMENTS UNDER THE TCPA.....	16
1. The Legislative History And The Commission’s Prior Rulings Make Clear That Invitations To Participate In Research Surveys Are Not Advertisements.....	17
2. A Survey—Or An Invitation To Participate In A Survey—Is Not A “Property, Good or Service” For The Survey Participant.....	18
3. Hypothetical And Indirect Commercial Benefit Cannot Convert An Informational Fax Into A TCPA Advertisement.....	19
III. CONCLUSION.....	22

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of M3 USA Corporation's)
Petition for Expedited Declaratory Ruling)

Rules and Regulations Implementing the)
Telephone Consumer Protection Act of 1991)

CG Docket No. 02-278

**M3 USA CORPORATION'S PETITION FOR EXPEDITED
DECLARATORY RULING**

Pursuant to Section 1.2¹ of the Rules of the Federal Communications Commission ("FCC" or "Commission"), M3 USA Corporation ("M3") respectfully petitions the Commission for an expedited declaratory ruling clarifying that research survey invitations do not constitute "advertisements" under the Telephone Consumer Protection Act ("TCPA"), as modified by the Junk Fax Prevention Act ("JFPA"), 47 U.S.C. §§ 227, *et seq.*, and the Commission's implementing regulations. A declaratory ruling from the Commission is necessary to dispel confusion over the proper application of the "pretext" exception to informational survey faxes in order to provide clarity and certainty to the business community, particularly market research survey companies, and to close a loophole that is being increasingly exploited by plaintiffs' counsel to target informational communications and expose defendants to massive liability under the TCPA's statutory damages provision. *See* 47 U.S.C. § 227(b)(3). The existing confusion creates an inappropriate risk of liability and chills important communications—particularly communications related to healthcare market research that the TCPA was never intended to

¹ *See* 47 C.F.R. § 1.2.

regulate. Therefore, to provide bright-line guidance in this area, the Commission should declare that:

1. There is no presumption under the TCPA that faxes sent by for-profit businesses are pretexts for advertisements;
2. Informational faxes are not pretexts for advertisements under the TCPA unless the transmission promotes specific, commercially-available property, goods or services *to the recipient of the fax*;
3. Market research surveys do not constitute property, goods or services vis-à-vis the persons taking the surveys under the TCPA; and
4. Invitations to participate in market research surveys are not advertisements under the TCPA unless commercially-available property, goods or services are promoted in the fax itself or during the survey itself.

I. INTRODUCTION.

A. BACKGROUND.

1. M3 Conducts Blinded Market Research Surveys.

M3 is a company that conducts qualitative and quantitative market research surveys across numerous healthcare-related topics that are germane to the practice of medicine. M3 gathers market research on behalf of end-user clients through blinded research surveys completed by physicians and other types of healthcare professionals. In other words, the entities on whose behalf M3 conducts surveys do not know the identities of those who complete the surveys. Typically, as well, the survey participants do not know the entities involved (*i.e.*, the survey is double-blinded). Inherently, market research surveys need to collect a statistically significant number of opinions and do not seek to change opinions or market any products, which would undermine the statistical significance of the survey. Furthermore, statistically significant market research surveys can only be properly performed if the recipients are not biased and do not know of the survey in advance. Blinded and double-blinded market research surveys are very common, particularly in the medical field, because they elicit more

scientifically valid and unbiased opinions. For these reasons, blinded and double-blinded research is the preferred method of research.

M3 conducts research surveys concerning medications, procedures, and techniques. In carrying out its surveys, M3 follows strict codes of conduct promulgated by independent research organizations. M3 is certified to ISO 26362 standards for market and opinion research, which requires that M3 does not attempt to market goods or services under the guise of research. M3's compliance with these standards is audited annually by the CASRO Institute for Research Quality.

To facilitate participation in its blinded market research surveys, M3 sends invitations via fax to medical professionals throughout the country.² M3 uses faxes as one of its preferred methods to inform healthcare professionals of these surveys in order to reach a broad, representative sample of prospective respondents. These survey invitations are generally tailored to the type of professional (*i.e.*, general physicians, surgeons, oncologists, nurse practitioners, etc.) to obtain relevant and responsive information from qualified respondents. The surveys themselves serve important societal purposes and assist the healthcare community's understanding of emerging and novel medical issues. Significantly, every market research survey conducted by M3 is reviewed and analyzed to ensure that the surveys only involve opinion collection and *not* advertising or marketing. To protect the identities of the respondents of these surveys, M3 does not provide contact information of survey respondents to any entities on whose behalf the surveys are conducted. Clearly, therefore, faxes sent by M3 informing prospective respondents of qualitative and quantitative market research surveys do not serve any commercial or advertising purpose whatsoever.

² Examples of M3's survey invitations are attached hereto as Group Exhibit A.

2. Pending TCPA Litigation Against M3.

On June 10, 2016, Plaintiff Comprehensive Health Care Systems Of The Palm Beaches, Inc. (“Comprehensive”)³ filed a putative TCPA class action against M3 in the United States District Court for the Southern District of Florida.⁴ This case is one of *fourteen* TCPA actions Comprehensive Health Care filed in the Southern District of Florida between May 31, 2016, and June 10, 2016. Of the fourteen actions, all but three were voluntarily dismissed.⁵

Comprehensive alleged the receipt of a single fax on December 8, 2015—roughly seven months earlier.⁶ Comprehensive alleged, without any support, that the fax “advertis[es] paid

³ It is increasingly common for physicians and healthcare providers to act as TCPA plaintiffs in fax cases, as fax remains the preferred method of communication in the medical industry. Many of these plaintiffs, like Comprehensive, are professional TCPA plaintiffs. Well-known TCPA plaintiff Physicians Healthsource, Inc.—a chiropractic clinic in Cincinnati—has, for example, filed over 30 cases in federal court alone since 2014. Another frequent filer, St. Louis Heart Center, has filed over 15 cases in federal court alone since 2014. Many courts have begun clamping down on serial fax filers. *See, e.g., A Aventura Chiropractic Care Ctr., Inc. v. BB Franchising LLC*, No. 1:15-CV-20137-UU, 2015 WL 11051056, at *4 (S.D. Fla. Aug. 26, 2015) (denying certification of a TCPA fax case where the plaintiff was “confus[ed] over the cases that his company has brought, including that: (1) he is unaware his company is the named plaintiff and proposed class representative of many of these cases . . . ; (2) he did not see the complaint filed in at least one other action . . . ; (3) he is unaware that his company acting as a class representative was unable to recover any money on behalf of a class in another case . . . ; (4) he does not recall signing settlement agreements . . . ; (5) he signed settlement agreements based on his ‘confidence in the firm,’ and that he ‘left it up to the attorneys’ to determine an appropriate settlement agreement . . . ; and (6) he is unaware that motions for attorney’s fees and costs have been filed against him in another action . . .”).

⁴ *See Comprehensive Health Care Systems of the Palm Beaches, Inc. v. M3 USA Corporation*, No. 16-cv-80967 (S.D. Fla.). The case was originally filed on May 31, 2016, captioned *Comprehensive Health Services, Inc. v. M3 USA Corporation*, No. 16-cv-80874 (S.D. Fla.).

⁵ The thirteen other cases—all filed in the Southern District of Florida—are Case Nos. 16-cv-80872, 16-cv-80873, 16-cv-80875, 16-cv-80877, 16-cv-80878, 16-cv-80888, 16-cv-80889, 16-cv-80958, 16-cv-80959, 16-cv-80965, 16-cv-80966, 16-cv-80967 and 16-cv-80968. The complaints filed in these cases are copy-and-paste pleadings, materially identical except for the defendant.

⁶ *See* 16-cv-80967, Docket Entry (“DE”) 1 (Complaint) ¶ 13 (S.D. Fla. June 10, 2016). Waiting over six months from the date of receipt prior to filing an action is a common tactic for TCPA

online surveys.”⁷ The face of the fax at issue shows that it was intended for “Dr. James Padula.”⁸ The fax at issue states, “[w]e are currently conducting an online survey with **Gastroenterologists**, and we would like to invite you to participate.”⁹ The fax informs the recipient of the estimated length of the survey (25 minutes); the compensation the recipient will receive upon completion of the survey (\$71); and the deadline to complete the survey (December 10, 2015).¹⁰ Since the fax announced a double-blinded study, it did not indicate on whose behalf the survey was being conducted.¹¹ Additionally, the fax states that the recipient “will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.”¹² A copy of this fax communication is included in Group Exhibit A hereto.

M3 timely moved to dismiss Comprehensive’s complaint on the basis that the fax at issue was not an advertisement.¹³ In response, Comprehensive sought leave to file and subsequently filed a First Amended Complaint.¹⁴ Through the First Amended Complaint, Comprehensive sought to convert the fax at issue into an advertisement by citing to the privacy policy and terms of use on M3’s website, which Comprehensive hypothesized governed research surveys.¹⁵ In

plaintiffs’ lawyers, who hope to cash in on an even greater putative class size by waiting to see if additional faxes are sent in the intervening time period.

⁷ *Id.* at ¶ 14.

⁸ *See id.* at DE 1-1 (Exhibit A to Complaint).

⁹ *See id.*

¹⁰ *See id.*

¹¹ *See id.*

¹² *See id.*

¹³ *See id.* at DE 15 (First Rule 12(b)(6) Motion to Dismiss).

¹⁴ *See id.* at DEs 20 (Motion for Leave to File Amended Complaint), 23 (Amended Complaint).

¹⁵ *See id.* at DE 23, ¶¶ 21-27.

short, Comprehensive suggested that if a fax recipient (i) registered for the survey at issue and (ii) agreed to the privacy policy and terms of use, then (iii) the privacy policy and terms of use indicate that the recipient may in the future receive some form of advertisement.¹⁶

Comprehensive did not allege that (i) it registered for a survey, (ii) it agreed to the terms of use and/or privacy policy or (iii) it has ever received an advertisement by fax or any other means.

Comprehensive also did not allege any product or service that it could purchase from M3 even if it wanted to (*i.e.*, a product or service that could have been commercially advertised).

M3 again moved to dismiss on the basis that the fax at issue was not an advertisement.¹⁷

Yet again, Comprehensive sought leave to file a Second Amended Complaint, which was granted.¹⁸ Comprehensive's Second Amended Complaint is materially identical to its First Amended Complaint, with the exception that it adds Dr. Robert Mauthe, M.D., P.C., as a plaintiff and appends the materially-identical survey invitation faxes that Dr. Mauthe received.¹⁹

Shortly thereafter, M3 filed its third motion to dismiss, which was fully briefed.²⁰ On January 11, 2017, the Court denied M3's motion to dismiss.²¹ The Court ruled that, on the basis of the terms of use and privacy policy attached to the Second Amended Complaint, "the ultimate question of whether Defendant's survey fax is merely a pretext for advertising its goods or services is a question of fact not suitable for disposition as a matter of law upon a motion to

¹⁶ *See id.*

¹⁷ *See id.* at DE 27 (Second Rule 12(b)(6) Motion to Dismiss).

¹⁸ *See id.* at DEs 36 (Motion to Amend/Correct Complaint), 37 (Order Granting Motion to Amend/Correct).

¹⁹ *See id.* at DE 44 (Second Amended Complaint).

²⁰ *See id.* at DEs 48, 51-54.

²¹ *See Comprehensive Health Care Sys. of the Palm Beaches, Inc. v. M3 USA Corp.*, No. 16-cv-80967, 2017 WL 108029 (S.D. Fla. Jan. 11, 2017).

dismiss.”²² The Parties have since been in the process of conducting significant and burdensome discovery.

B. THE DEFINITION OF AN “ADVERTISEMENT” AND SUBSEQUENT RULINGS BY THE COMMISSION.

The TCPA only imposes liability for unsolicited fax *advertisements*.²³ Under the Commission’s regulations, an “advertisement” is defined as “any material advertising the commercial availability or quality of any property, goods, or services.”²⁴

1. The Commission’s Guidance On “Advertisements.”

In interpreting the definition of “advertisements,” the Commission has indicated that certain types of communications are *per se* non-advertisements. The Commission has held, for example, that “messages whose purpose is to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender are not advertisements for purposes of the TCPA’s facsimile advertising rules.”²⁵ In so holding, the Commission protected a number of fax communications from potential liability under the TCPA, including (i) receipts, (ii) account information, (iii) notices of change in a membership, subscription or other ongoing relationship, (iv) documents facilitating loan transactions, (v) travel itineraries, (vi) certain trade show communications and (vii) mortgage rate sheets and price

²² *Id.* at *3.

²³ See 47 U.S.C. § 227(b)(1)(C); see also *Arkin v. Innocutis Holdings, LLC*, No. 8:16-cv-0321, 2016 WL 3042483, at *2 (M.D. Fla. May 26, 2016) (“[I]f the [f]ax is not an advertisement, Plaintiff has no claim under the TCPA.”).

²⁴ 47 C.F.R. § 64.1200(f)(1); see also 47 U.S.C. § 227(a)(5).

²⁵ *Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005*, Report & Order & Third Order on Reconsideration, 21 FCC Rcd 3787, 3812-13, ¶ 49 (2006) (“*Junk Fax Order*”).

lists.²⁶ The Commission also indicated that strictly informational faxes—*i.e.*, industry news articles, legislative updates, and employee benefit information—do not qualify as advertisements under the TCPA.²⁷

Importantly, the Commission also recognized that (i) company logos alone do not convert an informational fax into an advertisement and (ii) incidental advertising does not convert a fax into an advertisement. Specifically, the Commission ruled that:

In determining whether an advertisement is incidental to an informational communication, the Commission will consider, among other factors, whether the advertisement is a *bona fide* “informational communication.” In determining whether the advertisement is a *bona fide* “informational communication,” the Commission will consider whether the communication is issued on a regular schedule; whether the text of the communication changes from issue to issue; and whether the communication is directed to specific regular recipients, *i.e.*, to paid subscribers or to recipients who have initiated membership in the organization that sends the communication. [The Commission] may also consider the amount of space devoted to advertising versus the amount of space used for information or “transactional” messages and whether the advertising is on behalf of the sender of the communication, such as an announcement in a membership organization’s monthly newsletter about an upcoming conference, or whether the advertising space is sold to and transmitted on behalf of entities other than the sender[.]²⁸

In other words, informational communications, even if sent by a for-profit company—regardless of the presence of logos, company slogans, or the presence of incidental advertising—are not actionable under the TCPA.

2. The Commission’s Guidance On Surveys.

In line with the definition of “advertisement,” the Commission has repeatedly stressed that “messages that do not promote a commercial product or service . . . are not unsolicited

²⁶ See *id.* at 3813.

²⁷ See *id.* at 3814, ¶ 53; see also *N.B. Indus. v. Wells Fargo & Co.*, No. C 10-03203 LB, 2010 WL 4939970, at *7 (N.D. Cal. Nov. 30, 2010), *aff’d sub nom. N.B. Indus., Inc. v. Wells Fargo & Co.*, 465 F. App’x 640 (9th Cir. 2012) (highlighting and summarizing the *Junk Fax Order*).

²⁸ *Junk Fax Order*, 21 FCC Rcd at 3814, ¶ 53 n.187.

advertisements under the TCPA.”²⁹ While the Commission has noted “that any surveys that serve as a pretext to an advertisement are subject to the TCPA’s facsimile advertising rules,”³⁰ it has made clear in the context of telephone calls that surveys that do *not* serve as a pretext are not advertisements.³¹

Accordingly, the Commission’s prior pronouncements stand for two general propositions in the survey context: (i) a survey, standing alone, is not an advertisement, but (ii) a survey that serves as a pretext to an advertisement (*i.e.*, that pitches a product during the survey) is an advertisement under the TCPA. But the Commission has not provided any guidance as to how “pretext” is to be evaluated in the context of a survey (or other contexts). As detailed below, this has resulted in substantial confusion among federal District Courts and Courts of Appeals, and has also resulted in significant liability based on highly-attenuated and hypothetical theories of pretext. The lack of bright-line rules for determining whether a survey fax constitutes an advertisement has created a cloud of uncertainty for legitimate market research survey businesses like M3. Opportunistic plaintiffs’ attorneys have exploited this loophole to advance abusive class action litigation that threatens potentially ruinous liability against these businesses.

²⁹ *Junk Fax Order*, 21 FCC Rcd at 3810, ¶ 43; *see also In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report and Order, 27 FCC Rcd 1830, 1856, ¶ 63 (2012) (“[W]e find the calls at issue here are intended to communicate health care-related information rather than to offer property, goods, or services and conclude that such calls are not unsolicited advertisements.”).

³⁰ *Junk Fax Order*, 21 FCC Rcd at 3815, ¶ 54.

³¹ *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, Report & Order, 18 FCC Rcd 14014, 14040, ¶ 37 n.141 (2003) (“2003 TCPA Order”).

II. ARGUMENT.

A. THE COMMISSION HAS THE POWER TO ISSUE A DECLARATORY RULING CLARIFYING THE CIRCUMSTANCES IN WHICH A SURVEY FAX CONSTITUTES PRETEXT FOR AN ADVERTISEMENT UNDER THE TCPA.

Congress has left to the Commission's "sound discretion" the ability to issue a declaratory ruling to "terminate a controversy or remove uncertainty."³² Indeed, as the Commission recently noted, "by addressing requests for declaratory ruling and/or waiver, we are interpreting and implementing a statute, the TCPA, over which Congress provided the Commission authority as the expert agency."³³

B. COMMISSION ACTION IS NECESSARY TO DISPEL CONFUSION IN THE COURTS REGARDING THE DEFINITION OF "ADVERTISEMENT" AND THE EFFECT OF THE COMMISSION'S "PRETEXT" FINDINGS.

A declaratory ruling from the Commission is needed to dispel confusion among the courts concerning the circumstances under which survey faxes are pretexts for advertisements regulated under the TCPA. In particular, this confusion is highlighted by the recent and conflicting rulings from the Sixth and Second Circuits regarding the definition of an "advertisement" under the TCPA and the impact of the Commission's prior rulings relating to "pretext" in the fax context.

Through its opinion in *Sandusky Wellness Center, LLC v. Medco Health Solutions, Inc.*, the Sixth Circuit was the first Court of Appeals to evaluate, in depth, the definition of an

³² 5 U.S.C. § 554(e); *see also* 47 C.F.R. § 1.2(a) ("The Commission may . . . on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty."); *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, Petition of Kohll's Pharmacy & Homecare, Inc. for Declaratory Ruling and Waiver*, Order, 31 FCC Rcd 13289, ¶ 1 n.1 (Cons. & Gov't Affairs Bur. 2016).

³³ *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, et al.*, Order, 31 FCC Rcd 11943, 11949 ¶ 12 (Cons. & Gov't Affairs Bur. 2016).

“advertisement” under the TCPA.³⁴ *Medco* involved the issue of whether a medical formulary fax (*i.e.*, a fax listing medications available through a health plan) constituted an advertisement.³⁵ In no uncertain terms, the district court held that the fax was purely informational, noting that “[m]edical providers, like the plaintiff here, are often in the forefront of those complaining about frivolous litigation. That description is not far off the mark, if off it at all here.”³⁶

The Sixth Circuit agreed. After conducting a thorough analysis of prior District Court and FCC authority, the Court explained:

We can glean a few things from [the TCPA’s] definition. For one thing, we know the fax must *advertise* something. Advertising is “[t]he action of drawing the public’s attention to something to promote its sale,” or “the action of calling something (as a commodity for sale, a service offered or desired) to the attention of the public.” So material that advertises something promotes it to the public as *for sale*. For another thing, we know that what’s advertised—here, the “availability or quality of any property, goods, or services”—must be *commercial* in nature. Commercial means “of, in, or relating to commerce”; “from the point of view of profit: having profit as the primary aim.” It’s something that relates to “buying and selling.” So to be an ad, the fax must promote goods or services to be bought or sold³⁷

The Court went on to find that “[t]he fact that the sender might gain an ancillary, remote, and hypothetical economic benefit later on does not convert a noncommercial, informational communication into a commercial solicitation.”³⁸ The Court concluded that “the fax itself must at least be an indirect commercial solicitation, or pretext for a commercial solicitation . . . [a]nd

³⁴ See 788 F.3d 218 (6th Cir. 2015).

³⁵ *Id.* at 221-22.

³⁶ *Sandusky Wellness Ctr., LLC v. Medco Health Sols., Inc.*, No. 3:14CV00583, 2014 WL 6775501, at *2 n. 1 (N.D. Ohio Dec. 2, 2014).

³⁷ *Medco*, 788 F.3d at 221-22 (internal citations omitted).

³⁸ *Id.* at 225.

the record shows that these faxes were not.”³⁹

Recently, however, the Second Circuit weighed in on the definition of “advertisement,” in a decision that directly contradicts *Medco*. In *Physicians Healthsource, Inc. v. Boehringer Ingelheim Pharmaceuticals, Inc.*, the Second Circuit evaluated whether a seminar invitation constituted an advertisement under the TCPA.⁴⁰ The District Court in *Boehringer* determined, on a motion to dismiss, that “[n]othing in the Fax indicates that the dinner was a pretext for pitching a Boehringer product or service related to [certain medical conditions] or links the potential registrant with Boehringer’s other products and services.”⁴¹

On appeal, the Second Circuit reversed. Following a citation to the Commission’s 2006 Order discussing pretext, the Court held:

The district court interpreted the Rule as “requir[ing] plaintiffs to show that the fax has a commercial pretext—i.e., ‘that the defendant advertised, or planned to advertise, its products or services at the seminar.’ ” We do not disagree. But, at the pleading stage, where it is alleged that a firm sent an unsolicited fax promoting a free seminar discussing a subject that relates to the firm’s products or services, there is a plausible conclusion that the fax had the commercial purpose of promoting those products or services. Businesses are always eager to promote their wares and usually do not fund presentations for no business purpose. The defendant can rebut such an inference by showing that it did not or would not advertise its products or services at the seminar, but only after discovery. . . . Requiring plaintiffs to plead specific facts alleging that specific products or services would be, or were, promoted at the free seminar would impede the purposes of the TCPA.⁴²

The Second Circuit, in other words, seems to have misinterpreted the Commission’s prior statements as essentially permitting a *presumption* that any fax sent by a for-profit business

³⁹ *Id.*

⁴⁰ See 847 F.3d 92 (2d Cir. 2017)

⁴¹ *Physicians Healthsource, Inc. v. Boehringer Ingelheim Pharm., Inc.*, No. 3:14-CV-405 SRU, 2015 WL 144728, at *5 (D. Conn. Jan. 12, 2015).

⁴² *Boehringer*, 847 F.3d at 95-96.

plausibly serves as a pretext for an advertisement and thus runs afoul of the TCPA.⁴³

Within less than two years, two Courts of Appeals have issued conflicting opinions on the definition of advertisement and the role pretext plays in the analysis. The Sixth Circuit, as noted above, places the onus on the plaintiff to establish how a given fax is pretext for an advertisement. The Second Circuit, on the other hand, would apparently have District Courts presume that any fax sent by a for-profit entity is pretext for an advertisement.

There is further confusion among the Federal District Courts. For example, numerous District Courts have held that survey and similar faxes are not advertisements as a matter of law:

- ***Matthew N. Fulton, D.D.S., P.C. v. Enclarity, Inc., et al.***, No. 16-cv-13777, 2017 WL 783499 (E.D. Mich. Mar. 1, 2017): The court held that a fax that sought verification of a physician's address and secure information was not an advertisement because "nothing on the Fax (or even on Defendants' website) advertises for sale any good, products, or services of Defendants."
- ***Phillips Randolph Enters., LLC v. Adler-Weiner Research Chi., Inc.***, 526 F. Supp. 2d 851 (N.D. Ill. 2007): The court held that a fax that invited "business owners or business decision makers to participate in a research discussion on the topic of a new healthcare program sponsored by the Chicagoland Chamber of Commerce" was not an advertisement, despite offering a \$200 honorarium.
- ***Ameriguard, Inc. v. University of Kansas Medical Center Research Institute, Inc.***, No. 06-cv-0369, 2006 WL 1766812 (W.D. Mo. June 23, 2006): The court held that a fax announcing "the existence of a clinical drug trial and Defendant's need for individuals willing to serve as test subjects . . . does not announce Defendant is providing or otherwise has available goods, services, or property." *Aff'd*, 222 F. App'x 530 (8th Cir. 2007).
- ***N.B. Indus. v. Wells Fargo & Co.***, No. 10-cv-03203, 2010 WL 4939970 (N.D. Cal. Nov. 30, 2010): The court held that a fax promoting an annual business leadership award and containing an application for the award did *not* constitute an advertisement because the "faxed application here at most is an invitation to apply for a benefit." *Aff'd*, 465 F. App'x 640 (9th Cir. 2012).

⁴³ The Concurring Judge, in fact, went even further, contending that faxes sent by for-profit entities are *per se* advertisements under the TCPA. *Id.* at 99 (Leval, J., concurring).

But the District Court in M3's action held that faxes inviting participation in blinded market research surveys may constitute a pretext for a regulated advertisement, even though plaintiff did not allege (i) M3 ever sent an advertisement or (ii) M3 has any products or services whatsoever available for sale to the fax recipients.⁴⁴ This exact type of hypothetical and attenuated "pretext" was rejected on the face of the pleadings in *Enclarity*, where the Court was faced with—and disregarded entirely—the speculative notion that the Fax "was sent to Plaintiff with the goal of ultimately making profit—i.e., the fax was a pretext to obtain consent from Plaintiff so Defendants could later market additional goods and services to Plaintiff, and direct and increase traffic to Defendants' website."⁴⁵

C. UNCERTAINTY OVER WHAT CONSTITUTES AN "ADVERTISEMENT" SUBJECT TO REGULATION UNDER THE TCPA HAS CHILLED LEGITIMATE SURVEY COMMUNICATIONS AND FUELED ABUSIVE CLASS LITIGATION AND SETTLEMENTS.

The uncertainty as to what is and is not a fax advertisement has harmed, and continues to harm, legitimate businesses carrying out legitimate and lawful business plans. This uncertainty has greatly impacted the medical community in light of the frequency with which the healthcare industry communicates via fax. It has chilled legitimate and beneficial communications and has allowed plaintiffs' lawyers to hold companies hostage—oftentimes for millions of dollars—simply by virtue of the *in terrorem* effect of putative TCPA class actions in which class members

⁴⁴ See *Comprehensive Health Care Sys. of the Palm Beaches, Inc. v. M3 USA Corp.*, No. 16-cv-80967, 2017 WL 108029 (S.D. Fla. Jan. 11, 2017).

⁴⁵ *Fulton v. Enclarity, Inc.*, No. 16-cv-13777, 2017 WL 783499, at *2 (E.D. Mich. Mar. 1, 2017).

are entitled to statutory damages of \$500 or \$1,500 *per violation*, even in the absence of actual harm.⁴⁶

For example, on February 29, 2016, serial TCPA plaintiff Podiatry in Motion, Inc., and fellow serial TCPA plaintiff James L. Orrington, II, DDS, PC,⁴⁷ sued CoverMyMeds, LLC—an entity that enables prior authorization for prescription medications to be effectuated electronically.⁴⁸ After less than three months of “litigation,” the parties settled on a class basis for \$9,600,000.⁴⁹ Yet, nearly 50% of the settlement class received solely transactional faxes—*i.e.*, patient-specific prior authorization forms and patient enrollment forms for specific medications.⁵⁰ Indeed, the faxes were specifically defined by the parties in the settlement agreement as *transactional* faxes.⁵¹ Nevertheless, the settlement was approved and class counsel was awarded \$3,033,333.33 in attorneys’ fees.⁵²

In light of the outcome in CoverMyMeds, other plaintiffs’ lawyers are pushing the TCPA’s definition of “advertisement” even further beyond any meaning that fits the statute’s actual regulatory objectives. As noted above, in *Enclarity*, the same plaintiff’s counsel at issue

⁴⁶ See, e.g., *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1752 (2011); *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 678 (7th Cir. 2009) (“When the potential liability created by a lawsuit is very great, even though the probability that the plaintiff will succeed in establishing liability is slight, the defendant will be under pressure to settle rather than to bet the company, even if the betting odds are good.”).

⁴⁷ Podiatry in Motion has filed at least six TCPA cases in federal court in 2016 alone, while Mr. Orrington has filed at least fifteen since 2012.

⁴⁸ *Podiatry In Motion, Inc. v. CoverMyMeds, LLC*, No. 16-cv-02653 (N.D. Ill.).

⁴⁹ *Id.* at DE 32 (Motion for Preliminary Approval of Class Action Settlement).

⁵⁰ See *id.* at DE 44 (Motion for Preliminary Approval of Amended Class Action Settlement) at 5.

⁵¹ See *id.* at DE 44-2 (Exhibit to Appendix to Amended Class Action Settlement).

⁵² See *id.* at DEs 66 (minute entry approving the settlement and granting attorney fees), 67 (Final Order of Approval).

in the M3 lawsuit filed an action against Enclarity, Inc., and Lexis Nexis over a fax that merely sought to confirm medical provider information to ensure that protected health information was not inadvertently sent to the wrong address/fax.⁵³ As in M3's case, plaintiff's counsel appended numerous extraneous documents that were not mentioned in or attached to the fax—and, indeed, had nothing to do with the fax communication—to attempt to create a plausible argument of pretext.⁵⁴ As in CoverMyMeds and M3, plaintiff's counsel filed these cases hoping that the court allows the complaint to survive a motion to dismiss to force an *in terrorem* settlement in which they receive millions of dollars in attorneys' fees.

There can be little doubt that transactional faxes for patient-specific prescription medications are not advertisements under the TCPA. However, given the enormous exposure created by the TCPA, the professional plaintiffs' bar and the uncertainty surrounding the definition of "advertisement," multi-million dollar settlements have become a distressingly routine means for legitimate businesses to mitigate the risk and exposure of abusive class actions under the TCPA.

D. M3'S MARKET RESEARCH SURVEY INVITATIONS ARE NOT ADVERTISEMENTS UNDER THE TCPA.

It is important to note what this petition is not asking for. M3 *is not* asking the Commission to adopt a rule that only the four corners of a fax may be considered when evaluating whether a fax is an advertisement. M3 is requesting, rather, a limited ruling that invitations (like those attached as Group Exhibit A) to participate in blinded research are not advertisements under the TCPA where (i) no property, good or service is advertised on the fax itself and (ii) no property, good or service is advertised in the survey itself. In other words, M3

⁵³ See *Fulton v. Enclarity, Inc.*, No. 16-cv-13777, DE 1-2.

⁵⁴ See *id.*, at DEs 1-3, 1-4, 1-5, 1-6, 1-7.

seeks a declaratory ruling that a blinded research survey is not, in and of itself, a “property, good or service” vis-à-vis the recipient of the survey invitation.

M3’s request anchors the Commission’s recognition that a communication may serve as “pretext” for an advertisement to the text and purpose of the TCPA by requiring an informational fax actually to serve as pretext for a specific property, good or service advertised to the communication’s recipient. This clarification prevents the pretext exception from swallowing the general rule that informational faxes are not advertisements. And it closes the unintended loophole that clever plaintiffs’ lawyers are exploiting to impose TCPA liability for purely informational and lawful communications.

1. The Legislative History And The Commission’s Prior Rulings Make Clear That Invitations To Participate In Research Surveys Are Not Advertisements.

The legislative history of the TCPA, as well as the Commission’s prior rulings, make clear that research survey invitations are not advertisements.

In passing the TCPA, Congress specifically analyzed whether survey research—including “public opinion polling, consumer or market surveys”—constituted a “telephone solicitation.”⁵⁵

The legislative history contains the following analysis:

To come within the definition [of “telephone solicitation”], a caller must encourage a commercial transaction. Thus, the Committee does not intend the term “telephone solicitation” to include public opinion polling, consumer or market surveys, or other survey research conducted by telephone. A call encouraging a purchase, rental or investment would fall within the definition, however, even though the caller purports to taking a poll or conducting a survey.

Survey research conducted by telephone is not covered by the legislation for a number of reasons. First, such research has generated relatively few complaints from subscribers. Equally important, the results of telephone surveys could be rendered unreliable if the pool of subscribers available to be called was to be

⁵⁵ See H.R. Rep. No. 102-317, at *13 (1991).

artificially limited by “Don’t Call” lists or by other means. Alternative means of conducting surveys are significantly more expensive, and less practical, than telephone surveys.⁵⁶

Importantly, “telephone solicitation” and “unsolicited advertisement” have nearly identical definitions under the TCPA.⁵⁷ “Telephone solicitation” is defined to mean “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services”⁵⁸

Likewise, the Commission has indicated that “surveys, market research, political or religious speech calls” do not fall within the definition of a “telephone solicitation.”⁵⁹ To that end, the Commission has stated that only “surveys that serve as a pretext to an advertisement” constitute an “unsolicited advertisement.”⁶⁰

2. A Survey—Or An Invitation To Participate In A Survey—Is Not A “Property, Good or Service” For The Survey Participant

One of the arguments M3 is presently facing in its TCPA action is that its survey invitations “promote [M3’s] survey business.”⁶¹ In other words, Comprehensive is arguing that a survey, standing alone, constitutes a “property, good or service.” The legislative history and this Commission’s prior rulings undermine that argument.

While there is no doubt that individuals and companies often pay for surveys, the survey participants cannot plausibly be said to receive a property, good or service. For example, if a

⁵⁶ *Id.*

⁵⁷ Compare 47 U.S.C. § 227(a)(4), with 47 U.S.C. § 227(a)(5).

⁵⁸ 47 U.S.C. § 227(a)(4).

⁵⁹ 2003 TCPA Order, 18 FCC Rcd at 14040, ¶ 37.

⁶⁰ *Junk Fax Order*, 21 FCC Rcd at 3815, ¶ 54.

⁶¹ *Comprehensive*, 16-cv-80967, DE 60 (Plaintiffs’ Response in Opposition to Defendants’ Motion for Reconsideration) at 11.

politician commissioned a public opinion poll to be conducted by Company X, the poll would be a service vis-à-vis the politician. The poll cannot—in light of the above authority—be a service vis-à-vis the persons being polled. Likewise, when a pharmaceutical company commissions a blinded or double-blinded survey to be conducted by M3, the survey itself cannot be deemed a property, good or service vis-à-vis the medical professionals being surveyed. The survey invitations at issue thus cannot be said to be marketing M3's survey "service" to the survey participant, even if the survey participant has to visit M3's website to complete the survey.⁶²

3. Hypothetical And Indirect Commercial Benefit Cannot Convert An Informational Fax Into A TCPA Advertisement.

The principal argument M3 faces in its TCPA action is, in essence, that any fax sent by a for-profit company is presumed to be an advertisement or pretext for an advertisement. This argument poses an extremely dangerous risk to legitimate businesses that routinely communicate via fax, as is the case in the healthcare field.

Prior to the Second Circuit's decision, federal courts reached the nearly uniform conclusion that "[t]he fact that the sender might gain an ancillary, remote, and hypothetical economic benefit later on does not convert a noncommercial, informational communication into

⁶² To that end, it cannot be imputed to M3 that a visitor to its website could then possibly view other webpages that could constitute advertising. In other words, the Commission should not require M3 to, in effect, create an entirely sterile environment on its website, prohibiting survey participants from moving to other webpages. This would allow potential plaintiffs to create liability through their own actions, over which M3 cannot have any control. *See, e.g., Holt v. Redbox Automated Retail, LLC*, No. 11-cv-3046, DE 57 (S.D. Cal. June 20, 2013) ("The Court, however, declines to adopt this 'look through' approach to liability under the TCPA. Rather, the Court looks to the texts themselves, and the texts at issue here do not contain any marketing or promotional information Plaintiff's approach goes beyond what is actually stated . . . and invites liability based on what a consumer would find if he or she pursued the link."); *Aderhold v. Car2go N.A., LLC*, No. 13-cv-489, DE 74 (W.D. Wash. Feb. 27, 2014) ("It is manifestly insufficient that [Plaintiff] could, after choices of his own making, divert himself from the registration process to [Defendant's] marketing.").

a commercial solicitation.”⁶³ But the Second Circuit’s decision encourages plaintiffs’ counsel-driven litigation based on nothing more than extraordinarily attenuated, hypothetical economic or business benefits.⁶⁴ This is exactly what M3 is facing in its litigation, where plaintiffs’ counsel are simply hypothesizing about future economic benefits and future advertisements, despite the fact that their clients (i) have never taken an M3 survey, (ii) have never received an advertisement from M3 and (iii) have no reason to believe M3 ever sent an advertisement.

While the notion of pretextual advertising is firmly rooted in the TCPA’s legislative history, plaintiffs’ counsel are taking advantage of the confusion in the courts to use pretext as a basis for targeting informational fax communications for TCPA liability. Congress, for example, noted the possibility that, under the guise of a survey, a caller may encourage purchasing certain items.⁶⁵ The Commission has likewise noted the prospect that a “free” seminar or “free” publication may be subterfuge to sell products at the seminar or in the publication.⁶⁶ To presume pretext simply because a for-profit entity sent a fax, however, finds no support in the legislative history or the Commission’s prior orders. Rather, this extremely broad interpretation of the term “pretext” stretches the TCPA beyond its legitimate aims. The result is that legitimate businesses, including market research companies like M3, are forced to

⁶³ *Medco*, 788 F.3d at 225; see also *Physicians Healthsource, Inc. v. Janssen Pharm., Inc.*, No. CIV.A. 12-2132 FLW, 2013 WL 486207, at *5 (D.N.J. Feb. 6, 2013) (“[T]he inquiry under the TCPA is whether the content of the message is commercial, not what predictions can be made about future economic benefits.”); *N.B. Indus. v. Wells Fargo & Co.*, No. C 10-03203 LB, 2010 WL 4939970, at *10 (N.D. Cal. Nov. 30, 2010) (“The inquiry is not whether there is an ancillary commercial benefit to either party but instead is whether the message is an advertisement (or a pretext for an advertisement).”).

⁶⁴ The Eleventh Circuit—the Court of Appeals for the jurisdiction in which the M3 action is pending—has not opined on the pretext issue in the TCPA context, which is yet another reason for the FCC to provide definitive guidance on this issue.

⁶⁵ See H.R. Rep. No. 102-317 at *13 (1991).

⁶⁶ See *Junk Fax Order*, 21 FCC Rcd at 3814, ¶ 52.

settle putative class action lawsuits rather than endure the costs and risks attendant on even specious TCPA claims. The confusion about how pretext applies to survey faxes has created needless uncertainty and risk for market research companies and put them in the crosshairs of plaintiffs' counsel who threaten crushing TCPA liability for companies that only send informational communications.

The Commission should take this opportunity to bring much needed clarity and certainty to the application of pretext in the context of faxes that inform recipients of market research surveys. The Commission should limit pretext to situations where, for example, in a survey or seminar, specific properties, goods or services are marketed to the fax recipient during the survey or at a follow on seminar. M3's survey invitations neither advertise on the face of the fax, nor invite participation in surveys where properties, goods or services are advertised. Therefore, such communications cannot serve as pretext for any advertisements.

III. CONCLUSION

For the foregoing reasons, M3 USA Corporation respectfully requests the Commission to declare:

1. There is no presumption under the TCPA that faxes sent by for-profit businesses are pretexts for advertisements;
2. Informational faxes are not pretexts for advertisements under the TCPA unless the transmission promotes specific, commercially-available property, goods or services *to the recipient of the fax*;
3. Market research surveys do not constitute property, goods or services vis-à-vis the persons taking the surveys under the TCPA; and
4. Invitations to participate in market research surveys are not advertisements under the TCPA unless commercially-available property, goods or services are promoted in the fax itself or during the survey itself.

Respectfully Submitted,

M3 USA Corporation

By: /s/ Paul Werner

M3 USA Corporation
Craig Overpeck, Chief Technology Officer
501 Office Center Drive Suite 410
Fort Washington, PA 19034
(202) 293-2288

Paul Werner
SHEPPARD MULLIN RICHTER & HAMPTON LLP
2099 Pennsylvania Ave NW, Suite 100
Washington, D.C. 20006
(202) 747-1931
pwerner@sheppardmullin.com

Counsel to M3 USA Corporation

March 20, 2017

GROUP EXHIBIT A

**M3 GLOBAL
RESEARCH****MDLinX****EARN COMPENSATION
FOR YOUR OPINION!**

Dear Dr. James Padula,

We are currently conducting an online survey with **Gastroenterologists**, and we would like to invite you to participate.

Length: 25 minutes online

Compensation: \$71 for your time upon completion

Deadline: Thursday, December 10, 2015 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

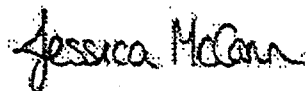
Survey Link: <http://www.m3globalresearch.com/myinvite>

User ID: 4409439

Invite Code: R9666F71

Thank you in advance for your time and participation!

Regards,



Jessica McCann

VP Global Operations

M3 Global Research

Please Note: You must be the doctor to whom this invitation is addressed in order to be compensated for participation. This invitation is not for members of M3 Global Research who may have already received an invitation via email, we apologize for any duplication. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@usa.m3.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288 x792

SUITE 410

FORT WASHINGTON, PA 19001
FAX 215.689.3706

**EARN COMPENSATION
FOR YOUR OPINION!**

Dear Doctor,

We are currently conducting an online survey with regarding Treatment Options, and we would like to invite you to participate.

Length: 30 minutes online

Compensation: \$30 for your time upon completion

Deadline: Thursday, October 29th, 2015 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

Survey link: <http://www.mdlinx.com/myinvite>

User ID: 279332FF09031

Invite Code: R9170F30

Thank you in advance for your time and participation!

Regards,

Jessica McCann

VP Global Operations, M3 Global Research

Please Note: If there are other physicians in your office who are also interested in participating, please have them contact support@mdl.com for their own unique access information. This invitation is not for members of MDLinx who may have already received an invitation via email. Please do not attempt to complete more than once as we can only compensate you once per survey.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 877.562.4024 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

**MS GLOBAL
RESEARCH****MDLinx****EARN COMPENSATION
FOR YOUR OPINION!**

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@usv.m3.com.

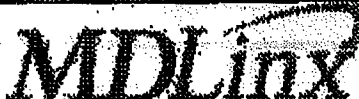
Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 877.562.4024 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288

SUITE 410

FORT WASHINGTON PA 19084
FAX 215.689.3706



EARN COMPENSATION
FOR YOUR OPINION!

Attention: ALL Physical Medicine and Rehabilitation specialists.

We are inviting physicians to share your valuable opinion in an online survey regarding Treatment Options.

Length: 30 minutes online

Compensation: \$40 for your time upon completion

Deadline: Monday, November 2nd, 2015 or when we reach our desired number of completions

To participate in this survey, log on using the unique access information below:

Survey link: <http://www.mdlinx.com/myinvite>

User ID: 279332FF03578

Invite Code: R9170F40

Thank you in advance for your time and participation!

Regards,

Jessica McCann

Jessica McCann

VP Global Operations

M3 Global Research

Please Note: If there are other physicians in your office who are also interested in participating, please have them contact support@usa.m3.com for their own unique access information. This invitation is not for members of M3 Global Research who may have already received an invitation via email. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@usa.m3.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9258 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288 X792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

M3 GLOBAL
RESEARCH

MDLinx

EARN COMPENSATION
FOR YOUR OPINION!

Attention: ALL Physical Medicine and Rehabilitation specialists.

I am writing to inform you that the deadline for our study about Treatment Options with is fast approaching. The survey should take approximately 30 minutes to complete. We are offering \$75 as a small thank you.

Deadline: Wednesday, November 4th, 2015 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

Survey link: <http://www.mdlinx.com/myinvite>

User ID: 279332FF03578

Invite Code: R9170F75

Thank you in advance for your time and participation!

Regards,

Jessica McCann

Jessica McCann

VP Global Operations

M3 Global Research

Please Note: If there are other physicians in your office who are also interested in participating, please have them contact support@usa.m3.com for their own unique access information. This invitation is not for members of M3 Global Research who may have already received an invitation via email. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@usa.m3.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

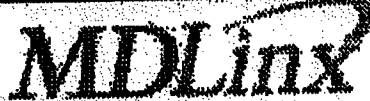
501 OFFICE CENTER DR
PHONE 202.293.2288 x792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

11-06-2015 14:52

202.410.0201


**EARN COMPENSATION
FOR YOUR OPINION!**

Attention: ALL Physical Medicine and Rehabilitation specialists.

If you have already completed the survey please pass it along to another Physician.

I am writing to inform you that the deadline for our study about Treatment Options with is fast approaching.

The survey should take approximately 30 minutes to complete. We are offering \$75 as a small thank you.

Deadline: Monday, November 9th, 2015 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

Survey link: <http://www.mdlinx.com/mvinvite>

User ID: 279332FF03578

Invite Code: R9170F75

Thank you in advance for your time and participation!

Regards,

Jessica McCann
VP Global Operations
M3 Global Research

Please Note: If there are other physicians in your office who are also interested in participating, please have them contact support@usa.m3.com for their own unique access information. This invitation is not for members of M3 Global Research who may have already received an invitation via email. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@usa.m3.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2282 x792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

**M3 GLOBAL
RESEARCH****MDLinx****EARN COMPENSATION
FOR YOUR OPINION!****Attention: Physical Therapists and Occupational Therapists**

We are currently conducting an online survey with **Physical Therapists and Occupational Therapists**, and we would like to invite you to participate.

Length: 15 minutes online

Compensation: \$15 for your time upon completion

Deadline: Friday, November 20th, 2015 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

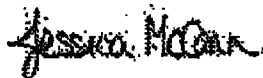
Survey link: <http://www.m3globalresearch.com/myinvite>

User ID: 281392F16796

Invite Code: R8567F15

Thank you in advance for your time and participation!

Regards,



Jessica McCann
VP Global Operations
M3 Global Research

Please Note: If there are other professionals in your office who are also interested in participating, please have them contact support@usa.m3.com for their own unique access information. This invitation is not for members of M3 Global Research who may have already received an invitation via email. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@usa.m3.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288 x792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

**EARN COMPENSATION
FOR YOUR OPINION!****Attention: Physical Therapists and Occupational Therapists**

We are currently conducting an online survey with Physical Therapists and Occupational Therapists, and we would like to invite you to participate.

Length: 15 minutes online

Compensation: \$15 for your time upon completion

Deadline: Friday, November 20th, 2015 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

Survey link: <http://www.m3globalresearch.com/mvinvite>

User ID: 281392F16796

Invite Code: R8567F15

Thank you in advance for your time and participation!

Regards,

Jessica McCann

VP Global Operations

M3 Global Research

Please Note: If there are other professionals in your office who are also interested in participating, please have them contact support@usa.m3.com for their own unique access information. This invitation is not for members of M3 Global Research who may have already received an invitation via email. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@usa.m3.com.

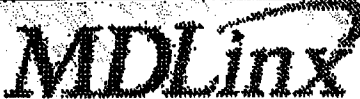
Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288 x792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

**EARN COMPENSATION
FOR YOUR OPINION!****Attention: Physical Therapists and Occupational Therapists**

We are currently conducting an online survey with Physical Therapists and Occupational Therapists, and we would like to invite you to participate.

Length: 15 minutes online

Compensation: \$15 for your time upon completion

Deadline: Monday, November 23rd, 2015 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

Survey link: <http://www.m3globalresearch.com/mvinvite>

User ID: 281392F16796

Invite Code: R8567F15

Thank you in advance for your time and participation!

Regards,

Jessica McCann

VP Global Operations

M3 Global Research

Please Note If there are other professionals in your office who are also interested in participating, please have them contact support@usa.m3.com for their own unique access information. This invitation is not for members of M3 Global Research who may have already received an invitation via email. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@usa.m3.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288 x792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

11-30-2015 14:33

202.293.2288


M3LinX

We are looking for your input!

FOR YOUR OPINION!

Attention: Occupational Therapists

We are currently conducting an online survey with **Occupational Therapists**, and we would like to invite you to participate.

Length: 25 minutes online

Compensation: \$15 for your time upon completion

Deadline: Friday, December 4th, 2015 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

Survey link: <http://www.m3globalresearch.com/mvinvite>

User ID: 281392F16796

Invite Code: R8567F15

Thank you in advance for your time and participation!

Regards,

Jessica McCann

VP Global Operations

M3 Global Research

Please Note: If there are other professionals in your office who are also interested in participating, please have them contact support@usa.m3.com for their own unique access information. This invitation is not for members of M3 Global Research who may have already received an invitation via email. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@usa.m3.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288 x792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

M3 GLOBAL
RESEARCH

MDLinx

EARN COMPENSATION
FOR YOUR OPINION!**Attention: Occupational Therapists and Physical Therapists**

We are currently conducting an online survey with Occupational Therapists and Physical Therapists, and we would like to invite you to participate.

Length: 15 minutes online

Compensation: \$15 for your time upon completion

Deadline: Friday, December 4th, 2015 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:


Survey link: <http://www.m3globalresearch.com/mvinvite>

User ID: 281392F16796

Invite Code: R8567F15

Thank you in advance for your time and participation!

Regards,



Jessica McCann

VP Global Operations

M3 Global Research

Please Note: If there are other professionals in your office who are also interested in participating, please have them contact support@usa.m3.com for their own unique access information. This invitation is not for members of M3 Global Research who may have already received an invitation via email. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-8 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@usa.m3.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288 x792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

M3 GLOBAL
RESEARCH

MDLinx

EARN COMPENSATION
FOR YOUR OPINION!

Dear Dr. Robert Mauthe,

I am inviting you to share your valuable opinion in an online survey regarding Diabetic Peripheral Neuropathy.

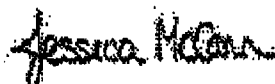
Length: 25 minutes online**Compensation:** \$50 for your time upon completion**Deadline:** Friday, April 1st, 2016 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

Survey link: <http://www.m3globalresearch.com/myinvite>**User ID:** 70048933**Invite Code:** R10398F50

Thank you in advance for your time and participation!

Regards,



Jessica McCann

VP Global Operations

M3 Global Research

Please Note: You must be the doctor to whom this invitation is addressed in order to be compensated for participation. This invitation is not for members of M3 Global Research who may have already received an invitation via email, we apologize for any duplication. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@m3globalresearch.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288 x792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

M3 GLOBAL
RESEARCH

MDLinx

EARN COMPENSATION
FOR YOUR OPINION!

Dear Dr. Robert Mauthe,

I am inviting you to share your valuable opinion in an online survey regarding Diabetic Peripheral Neuropathy.

Length: 25 minutes online**Compensation:** \$50 for your time upon completion**Deadline:** Wednesday, April 6, 2016 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

Survey link: <http://www.m3globalresearch.com/myinvite>**User ID:** 70048933**Invite Code:** R10398F50

Thank you in advance for your time and participation!

Regards,



Jessica McCann

VP Global Operations

M3 Global Research

Please Note: You must be the doctor to whom this invitation is addressed in order to be compensated for participation. This invitation is not for members of M3 Global Research who may have already received an invitation via email, we apologize for any duplication. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@m3globalresearch.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288 x792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706

**M3 GLOBAL
RESEARCH****MDLinX****EARN COMPENSATION
FOR YOUR OPINION!**

Dear Dr. Robert Mauthe,

I am inviting you to share your valuable opinion in an online survey regarding Diabetic Peripheral Neuropathy.

Length: 25 minutes online

Compensation: \$50 for your time upon completion

Deadline: Friday, April 8th, 2016 or when we reach our desired number of completes

To participate in this survey, log on using the unique access information below:

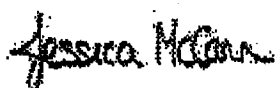
Survey link: <http://www.m3globalresearch.com/myinvite>

User ID: 70048933

Invite Code: R10399F50

Thank you in advance for your time and participation!

Regards,



Jessica McCann

VP Global Operations

M3 Global Research

Please Note: You must be the doctor to whom this invitation is addressed in order to be compensated for participation. This invitation is not for members of M3 Global Research who may have already received an invitation via email, we apologize for any duplication. Please do not attempt to complete more than once as we can only compensate you once per survey.

You will need to answer a few screening questions in order to qualify for this survey. Compensation checks will be sent in 4-6 weeks to participants who qualify and complete the entire survey. If you have any technical difficulties completing the questionnaire or comments/questions about this survey, please contact support@m3globalresearch.com.

Please be assured that any opinions expressed in this survey are for research purposes only and will be kept strictly confidential. You will not be solicited because of your participation in this study. There are NO sales or endorsements associated with this study.

If you would like your fax number removed, please call 800.222.9268 or fax 215.689.3706.

501 OFFICE CENTER DR
PHONE 202.293.2288 x792

SUITE 410

FORT WASHINGTON PA 19034
FAX 215.689.3706